

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
UNITED STATES OF AMERICA, : 90-cr-446 (RJD)
: :
- versus - : U.S. Courthouse
: Brooklyn, New York
PETER CHIODO, : :
Defendant : September 11, 2007
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE RAYMOND J. DEARIE
UNITED STATES CHIEF DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: **Roslynn R. Mauskopf, Esq.**
United States Attorney

BY: **Patricia Notopoulos, Esq.**
Assistant U.S. Attorney
One Pierrepont Plaza
Brooklyn, New York 11201

For the Defendant: **Kenneth I. Wirfel, Esq.**

Official Transcriber: **Rosalie Lombardi**
L.F.

Transcription Service: **Transcription Plus II**
821 Whittier Avenue
New Hyde Park, N.Y. 11040
(516) 358-7352

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1 THE CLERK: 90-cr-446, United States v. Peter
2 Chiodo.

3 Please state your appearance.

4 MS. HERMOZI: Patricia Notopolous and Mitra
5 Hermozi for the United States.

6 Good afternoon, your Honor.

7 THE COURT: Good afternoon.

8 MR. WIRFEL: Good afternoon, your Honor.

9 Kenneth I. Wirfel for Mr. Chiodo.

10 THE COURT: Good afternoon, everyone.

11 (Pause in proceeding)

12 THE COURT: Welcome back. I can't imagine it's
13 been -- I don't know how many years since I have seen you
14 but certainly almost 17 years since you entered your
15 plea. Wow.

16 Are we ready to proceed, Mr. Wirfel?

17 MR. WIRFEL: Yes, your Honor, we are.

18 THE COURT: Mr. Chiodo, have you had an
19 adequate opportunity, sir, to carefully read the
20 presentence report and related materials?

21 MR. WIRFEL: If I may comment, your Honor, I
22 have discussed it with him. I have read it to Mr. Chiodo
23 and discussed it with him on a telephone conversation
24 approximately a month ago. He did not personally review
25 the document but we discussed it at some length.

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1 THE COURT: Okay. Understanding the logistical
2 difficulties, I certainly can understand that but I would
3 be more comfortable if you took a few moments now.

4 MR. WIRFEL: Yes, your Honor.

5 THE COURT: there is -- I'm going to hand you
6 the principal documents which is the presentence report.
7 You have, of course, seen the government's letter of
8 September 7, Mr. Wirfel?

9 MR. WIRFEL: Yes, your Honor. I might add that
10 since there was an addendum to the presentence report --

11 THE COURT: Right.

12 MR. WIRFEL: -- it was only the addendum that
13 Mr. Chiodo had not seen.

14 THE COURT: That's what --

15 MR. WIRFEL: He had seen the initial
16 presentence report some time ago.

17 THE COURT: Well in a technical sense, the

18 MR. WIRFEL: Yes, your Honor, I just wanted to
19 clarify that though.

20 THE COURT: In a technical sense, the report
21 that I am working off dated July 3, 2007, it's an updated
22 report, not an addendum, as I understand it. That's the
23 way it's characterized.

24 In addition to the report, in the back you will
25 see the probation department's now rather dated

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1 recommendation but I will show it to you in any event.
2 There is also given his status, confidential memoranda to
3 the Court. Let me show those to you, as well. None of
4 this will come as any great surprise to you but I think
5 you should take the time.

6 If you would prefer to sit --

7 THE DEFENDANT: Okay.

8 THE COURT: Okay.

9 (Counsel and client confer)

10 THE COURT: Are we ready to go then?

11 MR. WIRFEL: Yes, your Honor.

12 THE COURT: In addition to the reports which
13 you have now examined, my file reflects a transcript of
14 the original plea back on December 6, 1990 that I took
15 and most notably, a copy of the superseding information.
16 I'm not so sure if you've seen this. Again, this is
17 another confidential memorandum dated May 6. It's not
18 terribly substantive but let me show it to you in any
19 event.

20 I have, as you've commented, the original
21 report, this was -- goes back to March 28, 1991, a copy
22 of the plea agreement and this, I take it is the -- what
23 has been referred to --

24 MS. NOTOPOULOS: It would be dated July 11,
25 1991, your Honor, the cooperation agreement.

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1 THE COURT: No, this is the original
2 cooperation agreement but I do have the operative one, as
3 well. This case is so old, you should know that it was
4 pre-guidelines. In fact, I have the sentencing panel's
5 recommendations here, I think, a practice we're going to
6 be returning to shortly. Again, they're somewhat dated
7 in light of history.

8 And then finally, the government's letter of
9 September 7, 2007; the government moves pursuant to of
10 5k1 of the guidelines but my question, is this a
11 guidelines case?

12 MS. NOTOPOULOS: Your Honor, I knew that it was
13 a 20 year cap. It may well have been a pre-guidelines
14 plea. Therefore, obviously the letter should speak to
15 our desire to have the Court grant Mr. Chiodo lenience
16 but obviously to the extent the Court still considers the
17 guidelines' help in deciding sentence, we would go by the
18 standard of 5k1.1.

19 THE COURT: Well, I think in light of the full
20 range of circumstances, it is more an academic question
21 than anything else, in light of what the government has
22 said and in light of my own experience with Mr. Chiodo.
23 Were it a guidelines case, I would grant the motion to
24 depart.

25 The more difficult question, of course, becomes

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1 having done that, where under these very unusual
2 circumstances, essentially in my experience
3 unprecedented, where do we go from there.

4 And with that, Mr. Wirfel, I will turn it over
5 to you.

6 MR. WIRFEL: Thank you, your Honor. If the
7 Court will indulge me, I would just like to make what may
8 be described as a few personal statements with regard to
9 this matter because I view my representation of Peter
10 Chiodo of being perhaps one of the most significant
11 matters that I have handled either as a prosecutor or
12 defense attorney in the federal courts.

13 As your Honor may recall, I joined the United
14 States Attorney's Office in this district in 1979. The
15 first week I came to this office, I was assigned to
16 represent the government in an appeal from a conviction
17 in the district court entitled United States v. Chiodo.
18 Mr. Chiodo had been convicted of a theft from an
19 interstate shipment of a truckload of liquor and
20 sentenced to prison and the first appellate brief I
21 handled as a government attorney was the appeal brief
22 from that conviction. I might add that it was affirmed.

23 Subsequent to that, many years later,
24 approximately ten, perhaps 11 years later, after I had
25 left the office, I received a phone call from a former

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1 colleague and dear friend, Charles Rose, who was the
2 chief of the organized crime section in the United States
3 Attorney's Office at the time asking me if I would do him
4 the courtesy of meeting someone who was interested in my
5 representation of him and he could tell me no further
6 information.

7 So that afternoon at his request -- there was
8 more in the conversation but I will try to keep it to its
9 bare essence, I went downstairs from my office and met
10 Special Agent John Flanagan (phonetic) from the FBI, who
11 I knew and was driven to a hospital here in the
12 metropolitan area where Mr. Chiodo was grievously ill
13 from a series of gunshot wounds he had suffered just days
14 before.

15 Apparently there was a universal recognition
16 that Mr. Chiodo, if he was going to consider cooperation
17 with the government, could no longer rely on the honest
18 services of his former counsel. And given his brief
19 knowledge of me from my handling of the government's
20 appeal, and the government and Mr. Rose's and
21 Mr. Greg O'Connell's (phonetic) knowledge of me from my
22 prior service in the office, I believe that both
23 Mr. Chiodo and the government realized that I would be an
24 honest broker and perform legal services to the best of
25 my ability and standards to which we must all adhere.

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1 So since 1979, effectively, I know Mr. Chiodo.
2 Since 1991, I have represented him in this matter. And
3 now approximately 16 years later, I stand before this
4 Court arguing on his behalf at sentencing. I might also
5 add this is somewhat of a coda of my legal career since I
6 have cut back significantly in my practice but because of
7 my relationship, there was no doubt that when Mr. Chiodo
8 called and Ms. Notopolous called, that I would come and
9 fulfill my responsibility to him and to the Court.

10 That brings us to the history of this case and
11 the crimes for which he is convicted and stands before
12 the Court today. As I said, he -- and as I know the
13 Court also observed Mr. Chiodo during those first weeks
14 and months after the, what I will call the assassination
15 attempt in Staten Island, was grievously injured and his
16 own health and life was in doubt as to his recovery and
17 his life expectancy at that time. He suffered a minimum
18 of eight wounds, perhaps as many as 12 but it was
19 impossible for the physicians to totally match up the
20 entry and exit wounds that he did suffer in his body.

21 For a period of months, he was in various
22 hospitals in the New York metropolitan area receiving
23 treatment. He required years and years of
24 rehabilitation. I know your Honor will recall because it
25 was so dramatic, that as the first cases of his former

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1 colleagues went to trial, how he came to court in a
2 wheelchair unable to stand and unable to move most of his
3 limbs, albeit only with great difficulty.

4 In fact, as Ms. Notopolous so dramatically
5 points out in her letter to the Court, there was a time
6 that he was testifying effectively back to back in two
7 proceedings; two different trials in this courthouse or
8 its predecessor courthouse, when he was taken from one
9 room to another in a wheelchair to testify.

10 I recall from my observations of him at the
11 time how tremendously, physically difficult that was for
12 him. How he was committed to the path that he had agreed
13 to follow and how he never swerved from that and he gave
14 everything that he had physically and emotionally to
15 fulfill his obligation to the government at that point.

16 I might also add, I got to spend obviously
17 many, many months with Mr. Chiodo. I am in no sense am
18 going to minimize the conduct for which he has been
19 convicted and freely admitted to this court. There's
20 nothing that can be said, that I can say, that can make
21 up for the suffering that some people suffered, even if
22 it was not directed at his hand but that he knew of and
23 may have exceeded to or agreed to.

24 But I came to recognize that Mr. Chiodo was an
25 exceptional person who had followed a wrong path in life.

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1 I don't excuse it. We can get some sense of the
2 understanding of a socioeconomic background that may have
3 led him from perhaps coming from the wrong side of the
4 tracks to follow the life or the path of crime that he
5 did for so many years.

6 But I had no doubt from early on that if this
7 man had been directed and guided in the right direction,
8 he would have been a leader of industry, he would have
9 been a true leader in his community. He could have done
10 great things. It did not happen. But I saw him as an
11 exceptional person. He was not a street thug. The waste
12 of his talent and ability was all the more tragic because
13 of that.

14 The other thing I will say about Mr. Chiodo in
15 that regard and we discussed it briefly this afternoon
16 before coming to court because our ability to communicate
17 has been so seriously limited by a series of telephone
18 calls that are triangulated through the marshals or
19 perhaps internet access at various times. And anyone who
20 is in private practice or even a federal defender or a
21 criminal justice act attorney from time to time, will
22 represent people who are so-called cooperators.

23 And it is not unusual as the Court knows full
24 well, to see people who minimize their conduct, who
25 rationalize their conduct who perhaps even excuse it or

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1 deny it. I will tell you that and Mr. Chiodo and I
2 discussed this very point, how dramatic it was to me that
3 once he made the agreement to cooperate with the
4 government, there was no turning back. There was no
5 holding back. There was no hesitation. It was a
6 fundamental seat change in his life and a direction from
7 which he has never regretted making, despite all of the
8 hardships he has endured.

9 That to me is by itself exceptional. I don't
10 mean to talk to the detriment of my or any other client
11 or anyone else's client, but I think we can all -- we've
12 all seen that. I think it was also recognized by almost
13 each and every jury of each and every judge that he
14 appeared before how freely he admitted his conduct, the
15 wrongfulness of the conduct, and despite the efforts of
16 scores and scores of some of the most talented defense
17 attorneys in this City, that he freely acknowledged his
18 conduct, did not flinch from it, gave jurors and judges
19 and prosecutors no reason to disbelieve him or to think
20 that he was doing anything other than freely admitting
21 his conduct and acknowledging the role of others.

22 Your Honor used the terms that his conduct, if
23 I recall correctly, was exceptional. I mean, it's almost
24 -- I would say almost unheard of. Looking back 15 years,
25 we may now have become a little, I don't know if blasé is

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1 the right word, but perhaps used to the fact that the so-
2 called "Code of Silence" has been broken in the Mafia by
3 others.

4 But at the time in 1990 and 1991, that
5 Mr. Chioldo set down that path and agreed to become a
6 government witness, that was literally unheard of. He
7 was, if I am not mistaken, the highest ranking member of
8 any Mafia family, I believe in the United States,
9 certainly in New York to come forward and to freely admit
10 his role and to testify against others. It was the
11 quintessential first crack in the dam.

12 What came after him in certain part, perhaps in
13 a very large part, is due to his decision to move in that
14 direction.

15 (Counsel and client confer)

16 THE DEFENDANT: I'm sorry, your Honor.

17 THE COURT: No need to apologize.

18 MR. WIRFEL: As your Honor knows from your own
19 memory of these trials in which you presided in at least
20 several instances and from Ms. Notopolous' letter, there
21 are over 20 convictions that the FBI directly attributes
22 to his testimony, including if I am not mistaken, the
23 bosses and under bosses of two of the five crime families
24 here in New York City. He was a critical, in some
25 instances, the sole witness against some of these

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1 individuals whose testimony was found to be highly
2 credible time and time and time again.

3 I am not one to try to push under a table or
4 hide under a rug the seriousness of the crimes for which
5 he was convicted but I remember and Mr. Chiodo and I
6 spoke about it today, after Charles Rose and I met with
7 him when he was weighing his decision, we both urged him
8 that if he was going to follow this path to recognize how
9 much and how important it was that he be truthful in
10 every respect.

11 Even though he had pleaded guilty to the
12 indictment, which was then standing against him, and
13 which almost certainly led to the assassination attempt
14 by his former colleagues, the government did not know
15 anywhere near the extent of his involvement in some of
16 these activities. And remarkably, when Mr. Chiodo and I
17 sat down, he acknowledged to me his role either in
18 passing information or in supervising or in somehow
19 furthering what became the efforts to murder and in some
20 instances, the successful efforts to murder several of
21 his colleagues for one reason or another. This was not
22 known to the government; his role was not known to the
23 government.

24 We both remarked today how we came in with some
25 trepidation to the United States Attorney's Office to

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1 present this information because it was going to be part
2 of the agreement that we would be obliged to keep. This
3 information came from Mr. Chiodo before the government
4 knew it. His plea agreement specifically refers to some
5 of those charges, primarily if not exclusively due to his
6 own admissions. We don't take them back. They stand
7 there. They are accurate. And he must be judged by this
8 court because of them. We recognize the heavy burden
9 that he was putting on himself and the decision that he
10 was making.

11 As Ms. Notopolous points out, remarkably, 16
12 years later, Mr. Chiodo is still providing historical
13 information to the government. He has been called
14 recently either to testify or to prepare to testify. It
15 has been one of the most remarkable efforts to assist the
16 government that I have ever seen, at least in this
17 metropolitan area.

18 On a more personal note and obviously most all
19 of us, even those of us who would consider ourselves old
20 timers are now very used to the guidelines and we're very
21 used to the exceptions to the sentencing guidelines that
22 the Court will consider, it has always been pre and
23 during and post guidelines ones where the Court could
24 consider the personal hardships that one would suffer.

25 First, as your Honor well knows, when

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1 Mr. Chiodo agreed to cooperate and consider the witness
2 security program which he ultimately entered, he had a
3 number of members of his family residing in the New York
4 area. He had parents. He had a sibling. He had his own
5 family. The dislocation that they were all going to
6 suffer was one this court has seen on other occasions
7 also. One family member, believing that she was not at
8 risk, decided -- opted to stay in New York, his sister,
9 and she almost paid for that with her life. She herself
10 in an act of retribution or vengeance against Mr. Chiodo
11 was shot by one of his former colleagues and thankfully
12 she lived to testify against that individual as
13 Mr. Chiodo came back from witness security at the
14 government's request and testified also.

15 When Mr. Chiodo was literally a cripple and
16 could not fend for himself, the person who was at his
17 bedside the entire time was his wife, Philomena
18 (phonetic). I have very strong memories of how devoted
19 she was to him throughout this period; feeding him,
20 bathing him, nursing him, giving him the love and
21 attention that all of us would be blessed to received,
22 God forbid we were in a similar situation.

23 The roles have reversed now. While Mr. Chiodo
24 has regained a good deal of mobility, he does not have
25 all of it, but his wife has suffered a serious stroke and

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1 he is now her nurse and primary caregiver. There is not
2 money in the family to pay for private duty nursing, home
3 care. There is one adult daughter. As your Honor, I
4 believe understands also, Mr. Chiodo's suffered a tragedy
5 that his son who accompanied them into the witness
6 security program and who grew to have his own family and
7 children was the victim of a hit and run driver last year
8 and died, pursuant to that accident.

9 Mr. Chiodo has limited income. He did
10 remarkably, as I referred to his intelligence, continue
11 his education. He gained a professional degree, although
12 he has not been able to use that for gainful employment
13 on a regular basis. But it is a mind that is sharp and
14 clear and he tries to be a giving member of his
15 community.

16 And your Honor has, I think, one of the most
17 difficult choices that you've had in a sentencing. I
18 have never envied federal judges and the decisions you've
19 had to make about people's lives. And again, I am not
20 going to ask the Court to forgive Mr. Chiodo for what
21 he's done because no one can. But to recognize the
22 efforts over 16 years that he has made to contribute to
23 the government's success, to turn a page in his life, to
24 make himself and his family whole and to be a law abiding
25 and decent member of our community.

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1 I did receive a sharply redacted letter from
2 Mr. Chiodo's doctor. He is still suffering the effects
3 of his injuries now 16 years later. He needed repair of
4 certain injuries which require him to have chronic pieces
5 or the permanent pieces of mesh from which he can suffer
6 infection on a regular basis. He needs to get treated
7 with antibiotics on a regular basis. He has as he is no
8 longer a young man, he does have other issues with his
9 adrenal gland, he has an enlarged heart, he suffers from
10 gallstones and some of these are slated for some surgical
11 procedures to remove certain risks or discomfort. And it
12 must be noted also that the gunshot wounds still limit
13 his mobility significantly and are a source of chronic
14 pain.

15 I could stand here for much longer; I won't. I
16 have made the mistake that many lawyers can hopefully
17 avoid of becoming a friend to a client, someone that I
18 respect and would like the suffering to end and I ask the
19 Court to take all of this into consideration.

20 THE COURT: Before we go forward, could I have
21 my reports back? Do you have them there?

22 THE CLERK: Yes, they're there. Yes, you do
23 have them, Judge.

24 THE COURT: You got them back from the lawyers?

25 THE CLERK: Yes.

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1 MR. WIRFEL: Yes, yes.

2 THE CLERK: (inaudible).

3 MR. WIRFEL: There were several confidential
4 memorandums, your Honor.

5 THE COURT: Yes.

6 MR. WIRFEL: I believe you have all of those.

7 THE COURT: I beg your pardon.

8 Ms. Notopoulos?

9 MS. NOTOPOULOS: Yes, sir. Thank you.

10 THE COURT: Wait, wait.

11 MS. NOTOPOULOS: Oh, I am sorry.

12 THE COURT: No, I am not sure I beg your
13 pardon. What the heck?

14 MS. NOTOPOULOS: That's still being an accused.

15 THE COURT: Are you sure you gave me everything
16 back? Not you, the lawyers?

17 MR. WIRFEL: It could have been a confidential
18 memorandum. I just want to see if he checks that they
19 have those here. I have none of those here on top.

20 MS. NOTOPOULOS: Judge, would you like my copy
21 in the interim until we sort this out?

22 THE COURT: It's gotten that bad, huh?

23 MS. NOTOPOULOS: My only copy.

24 THE COURT: Yes, I would because mine seems to
25 have walked away.

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1 MS. NOTOPOULOS: Here. Also --

2 THE COURT: Thank you. This looks an awful lot
3 like my copy.

4 All right, Ms. Notopoulos?

5 MS. NOTOPOULOS: Yes, your Honor, thank you. I
6 understand Ms. Hermozi graciously put my appearance on
7 the record. I don't know if she was recognized as being
8 here as the Chief of the Organized Crime and Racketeering
9 section of the office.

10 THE COURT: All right.

11 MS. NOTOPOULOS: Present also from the office
12 is Greg Andres, Chief of the Criminal Division, Deputy
13 Chief of the Organized Crime Section, Joey Lipton. I
14 also want to recognize, I beg the Court's time to
15 recognize other individuals who are here because I think
16 it's important to note the support of people that have
17 come here today.

18 Supervisory Special Agent of the Lucchese
19 squad, Michael Dressler (phonetic) is here. Special
20 Agent Kathy Batt (phonetic) who is Mr. Chiodo's current
21 handling agent, agents who handled Peter Chiodo from the
22 very beginning and are here for this type of ending, Luke
23 Andolfo (phonetic) and John Flanagan who have since
24 retired and yet come back to show support. Special
25 Agents Lou DiGregorio (phonetic) and Ted Oddo (phonetic)

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1 are also here from the FBI. I also note even paralegals,
2 your Honor, Linda McNeil (phonetic), Sam Nole (phonetic),
3 Catherine Hudack (phonetic); I think that's extraordinary
4 because when the government tries cases of the nature
5 that Mr. Chiodo has become involved, they've put their
6 heart and soul into these cases and they, too, see the
7 contribution and sacrifice that Mr. Chiodo has brought.

8 If spirits are among us, your Honor, I am sure
9 that Charles Rose is here today. And also,
10 AUSA Gregory O'Connell is here. Mr. O'Connell and Mr.
11 Rose, as defense counsel has indicated, were the
12 original, as the Court is well aware, assistant United
13 States attorneys that deal with Mr. Chiodo when he first
14 cooperated. I know that
15 Mr. O'Connell would like to say something to the Court
16 whenever the Court feels -- if would like to hear from
17 Mr. O'Connell and whenever the Court feels that that's
18 appropriate.

19 THE COURT: He can do that now. I see him
20 there.

21 MR. O'CONNELL: Your Honor, this takes us way
22 back. I don't want to spend time rehashing what
23 Mr. Wirfel so eloquently said to the Court on behalf of
24 Mr. Chiodo but I do want to re-emphasize one point to
25 place in context Mr. Chiodo's cooperation back in 1989,

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1 1990, 1991. At that time, a reason this court should
2 consider for distinguishing Mr. Chiodo's cooperation
3 apart from so many other cooperators who have since come
4 into this courthouse or the courts over in the southern
5 district, at that time in 1990 when the "Window" case,
6 for example, was first indicted, we had no made members
7 of organized crime in New York cooperating with the
8 government. The case -- the "Window" case was predicated
9 largely as your Honor will recall, on the assistance of
10 an associate in the Genovese crime family at the time,
11 Peter Savino, along with Bobby Faranga (phonetic).

12 But at that time, there was a birth of
13 assistance from the ranks of organized crime. A few
14 years before there was an individual named Fish Cafaro,
15 who was a Genovese soldier/captain at times, who had
16 cooperated on and off but it really led to no where. We
17 had met with him, Charles and I, before the indictment of
18 the "Window" case and before its trial and we found him
19 to be of little assistance, notwithstanding that we had
20 high ranking Genovese crime family members indicted in
21 that case.

22 So when Mr. Chiodo pled and then later was the
23 object of a failed execution attempt by Anthony Casso and
24 Vic Amuso and the Lucchese crime family, we really were
25 at a point in the war against organized crime where we

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1 didn't have much in the way of resources, other than the
2 tapes we had, wiretap capabilities that we had, source
3 information that the bureau had, but we didn't have
4 witnesses from within the ranks of organized crime who
5 could reveal the devastating type cases that could be
6 brought against them involving principally homicides that
7 would carry mandatory life sentences under the guidelines
8 and life sentences in the ordinary course in the
9 preguidelines era.

10 And when Pete Chiodo survived his shooting, and
11 we do remember as Charles used say it often, it was I
12 believe 12 shots and 15 entry and exit wounds, he
13 survived, he fearlessly took on his immediate supervisors
14 in the Lucchese crime family, namely Anthony Casso and
15 Vic Amuso by becoming a cooperator who I think widely
16 throughout the ranks of the LCN at that time were viewed
17 as among the most fearsome and treacherous in organized
18 crime; Gas Pipe Casso, in particular. And Mr. Casso was
19 Mr. Chiodo's direct superior in that crime family.
20 Mr. Casso was involved in homicides that Mr. Chiodo was
21 able to inform the government about and later juries and
22 trial testimony. And Mr. Chiodo's assistance really led
23 to breaking down that wall of silence which existed at
24 that time. So for that reason alone, his cooperation is
25 unprecedented.

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1 And in this law enforcement, crazy world of
2 ours, from a government's point of view, whether there
3 are risks and there are rewards, I believe that and
4 unprecedented performance by a cooperating witness such
5 as Mr. Chiodo should be greatly rewarded. And I could
6 cite, for example, after Mr. Chiodo signed the agreement,
7 it was within just a few months that -- actually within a
8 year of his cooperation becoming public and his
9 testimony, Al D'Arco, the acting boss in the Lucchese
10 crime family came in as a cooperator. Sammy Gravano
11 signed up as a cooperator and testified as you know, in
12 many cases included the case against John Gotti.
13 Mr. Chiodo testified against bosses of crime families
14 including his own crime family, and Amuso, Chin Gigante
15 from the Genovese crime family. And over time with his
16 assistance, a legion of cooperators from the Lucchese
17 family, from other crime families, came forward and
18 enabled this office in the eastern district to have
19 unprecedented success in its war against organized crime.

20 So as a historical matter, Mr. Chiodo's
21 cooperation truly stands out and he's peerless for that
22 reason alone. And I think that he should be rewarded for
23 his cooperation. Apart from everything that Mr. Chiodo's
24 counsel, Mr. Wirfel, had to say, it's really the message
25 that goes out to the street that counts the most. And

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1 the reward that he's entitled to, I think, in our system
2 of justice really should be measured against the legion
3 of cooperators who followed him and assisted both the
4 Southern District and the Eastern Districts of New York
5 and their great successes in the war on crime and
6 essentially dismantling two generations of leadership of
7 all of the crime families.

8 THE COURT: Thank you, sir.

9 MS. NOTOPOULOS: Your Honor, if I could
10 continue, I also want to note that tragically we have a
11 person here today who never would have wished to be in
12 the position of needing to be here and that is that there
13 is a Ms. Rosalie Sagona, who is the sister of a murder
14 victim, Angelo Sagona. She simply wants the Court to
15 know that her presence is in the courtroom, your Honor.

16 Your Honor, Peter Chiodo signed a cooperation
17 agreement, as I said earlier on July 11, 1991. 16 years
18 and two months exactly later, we are here for this
19 proceeding. The government filed a 5k1.1 letter,
20 although no guidelines apparently are applicable.
21 Obviously the spirit of that letter indicates that we are
22 seeking cooperation -- I'm sorry -- leniency for
23 Mr. Chiodo.

24 His sentencing guidelines as calculated by the
25 Department of Probation exceeds the statutory maximum of

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1 20 years. In my letter, I indicated that Mr. Chiodo's
2 cooperation was substantial, if not extraordinary. I
3 just want to take a few minutes to indicate why I used
4 that word extraordinary which I have never used before in
5 my 16 years doing organized crime in this office for a
6 cooperating witness.

7 I have never in my experience, and I don't
8 think there's anybody here that would disagree, has never
9 before has a cooperator accomplished more through
10 cooperation and sacrificed more because of it. I don't
11 want to belabor the facts in the government's letter.
12 Mr. Wirfel has drawn the Court's attention to the fact
13 that the FBI attributes 22 convictions to Mr. Chiodo.
14 But it's the quality, more than the quantity that strikes
15 me. Bear in mind that in most cases, Mr. Chiodo, as been
16 said before, was a primary witness, usually the only
17 witness to a murder for which numerous, numerous people
18 were convicted. And who was convicted? There were two
19 mob bosses; Vic Amuso is spending his life in prison
20 based on murder convictions that were obtained through --
21 almost solely Mr. Chiodo's testimony. Vincent Gigante
22 was convicted of charges stemming from the "Windows" case
23 and later perjury charges. He's been sentenced to 15
24 years in jail and died in prison.

25 One mob boss cooperated with the government, Al

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1 D'ARco and no doubt that was influenced in part by
2 Mr. Chiodo's courage and in part by evidence that he
3 would have known Mr. Chiodo had on him. That
4 cooperating witness who was an acting street boss of the
5 Lucchese family brought many convictions to the
6 government himself.

7 We also had the Greek Godfather, a leader of
8 his own group, Spirous Valencas (phonetic), who is also
9 in jail for the rest of his life. We had the underboss
10 of the Lucchese family, Anthony Casso, who pled guilty to
11 multiple murders, no doubt aware that Chiodo's testimony,
12 had he testified at his trial, would have been
13 devastating. He is in jail for life after a failed
14 cooperation attempt.

15 Most of Chiodo's crew members are also in jail;
16 Richard Pagliarulo (phonetic), who ventured to go to
17 trial is spending -- died in jail having been sentenced
18 to life for his commission of multiple murders. Michael
19 DeSantis sentenced to 252 months incarceration. Frank
20 Lastorino (phonetic) 216 months, George Cippolla, 22
21 years, George Conte, 264 months, Michael Spinelli, 264
22 months; all for murders, murder conspiracies and crimes
23 of the worst order. And all of them, I believe, can be -
24 - would not have been had it not been for
25 Mr. Chiodo's cooperation. Quite simply, he took down the

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1 administration of the Lucchese family and a good piece of
2 it.

3 I would like to say a few words about the
4 murders in which Mr. Chiodo is charged. Your Honor,
5 Mr. Chiodo initially pled guilty in the "Windows" case
6 before the Court. He probation report in that case which
7 was a guideline case reflected a 78 to 97 month guideline
8 sentence. At the time Chiodo decided to cooperate and
9 I've checked this numerous times with various law
10 enforcement agents, the government had no evidence to
11 charge Mr. Chiodo with any murder and I dare to say, we
12 were not aware of any murders he had committed beyond
13 perhaps a generalized suspicion based on his position in
14 the family. Yet when he chose to cooperate, he advised
15 the government of all of the murders and murder
16 conspiracies in which he had participated and he opened
17 himself up to the 20 year sentence that he faces today.
18 These were horrible crimes. The worse a man can admit --
19 commit. However, in mitigation, as has been noticed,
20 Chiodo was never the shooter. He conspired to murder
21 some being ordered by his superiors to kill others.
22 Quite frankly, as crazy as Anthony Casso was, on pain of
23 death would he have suffered had he not followed those
24 orders. And he assigned other crew members to carry out
25 the contracts. He also aided and abetted in other

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1 murders by surveilling targets in helping to set them up
2 but never himself was he a shooter.

3 No one can understand the pain that this
4 activity has brought to the victim's families and
5 certainly to Ms. Sagona who is here today. We understand
6 their desire for justice and punishment no doubt to the
7 fullest degree of the law. However, the government and
8 law enforcement stands in a different place. We have to
9 deal with the harsh reality that in organized crime
10 cases, witnesses do not come forward, wiretaps are often
11 unavailing and most often, it is only through cooperation
12 that individuals -- of individuals like Mr. Chiodo who
13 can bring people to justice for murder if they are
14 involved in organized crime.

15 In order to encourage and reward that
16 cooperation, we seek lenience for those cooperators. I
17 would note that only through Mr. Chiodo's cooperation did
18 we learn that Gas Pipe Casso order the murder of
19 Mr. Sagona. Mr. Casso is jail for life. Only through
20 the cooperation of Mr. Chiodo did we learn that Richard
21 Pagliarulo shot and killed Mr. Sagona in a car that was
22 driven by Michael DeSantis. Mr. Pagliarulo was sentenced
23 to a term of life imprisonment and he died there.
24 Michael DeSantis is serving a 252 month term of
25 incarceration because he pled guilty.

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1 By exposing himself to a stiffer sentence,
2 your Honor, I would say that that was a sacrifice on
3 Mr. Chiodo's behalf. Mr. Chiodo also when we talked
4 about sacrifice as has been duly noted by several people
5 suffered debilitating injuries when he was assassinated.
6 I know the Court witnessed first hand his disabilities as
7 he would testify in a wheelchair. Earlier on, he was in
8 a very weakened condition. He withstood days and days of
9 stiff cross-examination. He was exhausted. It could not
10 have been good for his health.

11 Worse yet was the shooting of his sister. In
12 the wake of cooperation, we tell the Court all of the
13 time that organized crime cooperators bring danger to
14 their families. Peter Chiodo's wife, father and uncle
15 were targets of unsuccessful attempts to retaliate
16 against Chiodo's cooperation. Then in 1991, he was
17 successful -- I'm sorry, in 1991, the leadership of the
18 Lucchese family was successful in obtaining some
19 retaliation in shooting Chiodo's sister in the neck and
20 the back. Fortunately, she survived.

21 But this danger, your Honor, became real. Yet
22 through all that, Peter Chiodo persevered as a
23 cooperating witness. I believe from my 16 years of
24 knowing Peter Chiodo that his motivation was not just to
25 receive a reduced sentence but to make amends for his

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1 past deeds. And I believe that that is why Mr. Chiodo
2 was able to -- or why he sacrificed so much and
3 persevered in light of all of these things that happened.

4 I mentioned to the Court accomplishments in
5 sacrifice as a Chiodo's cooperation. Others have
6 accomplished a lot but I don't know anyone who has
7 accomplished this much. And I am aware of no one who has
8 sacrificed this much. This is why in my letter, I
9 ventured to say that Chiodo's cooperation was not just
10 substantial but extraordinary.

11 THE COURT: Mr. Chiodo, what would you like to
12 say, sir?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: What would you like to say?

15 THE DEFENDANT: Well, I dare say I am very
16 overwhelmed being here today. This occasion has brought
17 back the past and as I look around the courtroom, I see
18 people that have helped me to get where I am now. You
19 know, it's not often that you get a do over in life and I
20 tried every part of my being to become a human being that
21 this court, this nation and the people that have helped
22 me could be proud of. Though I am not rich, I am because
23 my life is dedicated to that now. These men that stand
24 behind me that are here on my behalf of the people here
25 have shown me what true honor is and what people of honor

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1 are about.

2 I can't even start to describe my feelings for
3 them and the things that they have done to make me see
4 the errors of my ways and how to correct that. I tried
5 at every instance, every request that the Court and the
6 government had to do my utmost and to tell the truth and
7 to help as many times as I could. I think back to the
8 days where the marshal service was -- had the
9 responsibility of bringing me from one place to the other
10 when I was in the wheelchair and the extraordinary
11 efforts that they made on my behalf.

12 I thought about this day for a long, long time
13 and I really never thought it would be -- thought it
14 would come. I just thought I might not live to see that
15 day. I am so glad that I am still here to look you in
16 the eye and to tell you that the Peter Chiodo that
17 existed before 1991 doesn't exist anymore. I can't even
18 remember what he was like and my life since then, I feel
19 I could be proud of and everybody else that helped me
20 could be proud also. Thank you.

21 THE COURT: Well, I too have been waiting for
22 this day. Every once in a while I would hear your name.
23 I would hear rumors that you're in the courthouse that
24 you're testifying here or there. One time, I don't think
25 you even know it, I caught a glimpse of you. Year after

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1 year I would tell my law clerks about Pete Chiodo and the
2 "Windows" case and our time together in White Plains.
3 It's not the kind of thing you forget.

4 I remember you on the witness stand up in White
5 Plains very vividly and how difficult it was for you
6 physically. I remember that very vividly. I remember
7 thinking to myself that this is -- this seems like more
8 than a guy trying to work off a sentence because you were
9 in such discomfort. I also remember how some of the best
10 lawyers around took their shots at you and comfortable as
11 any cross-examiner would be with the fact that the
12 witness is going to tell the truth and in a way treated
13 you from a trial lawyer's perspective and the trial
14 judge's perspective, treated you cautiously and with
15 respect. I remember that very well.

16 I don't -- as I said, I have known this day was
17 coming and I haven't looked forward to it, all the while
18 realizing that you've been testifying successfully. I
19 have spoken to my colleagues, some of whom have had you
20 in their courtrooms. I, myself, recall the testimony.
21 You were a very strong witness. You impressed them all.
22 And as Mr. Wirfel said, everyone entertained the same
23 thought; what would have happened had Peter Chiodo chosen
24 a different path. Your success within the realm of the
25 confines of organized crime was no doubt in part due to

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1 your intelligence. The successes you would have almost
2 inevitably enjoyed in private life outside of organized
3 crime is one of the things you've lost as a result of
4 your conduct.

5 Now, the family, when I think how difficult it
6 must be to be -- to lose contact with family members,
7 become estranged and then have to deal with the fact that
8 your own sister was assaulted in what is from my money,
9 the most extraordinarily wanton act of violence and
10 cowardice that I have ever witnessed in fact or fiction
11 and how you have to carry that with you. I remember her
12 testifying. I remember the fear, even in the courtroom,
13 protected by marshals and agents and the Court; the fear
14 was there. It was palpable. She has you to thank for
15 that. That's another one of your losses.

16 Of course, the physical injuries you've
17 suffered speak for themselves. I can't help but say that
18 you know, on a day that we mourn and remember thousands
19 of people who were killed a very short distance from
20 where I sit, who mourns and remembers the victims of your
21 crimes; just a few lonely family members. You've got
22 that to carry with you, too.

23 I don't ignore the positive side. From
24 everything Ms. Notopoulos says, you presented an
25 unprecedented record of success in the hard currency of

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1 law enforcement. You were a sugar daddy, to say the
2 least. Your cooperation was likely a watershed of that,
3 to the demise of much of organized crime. You sort of
4 underwrote the culture of the so-called code of silence
5 and brought others in behind you. I don't diminish that
6 at all. I really don't.

7 But the hard reality is, I have to make a
8 judgment here based upon what everybody says, based upon
9 this long, torturous period for you, your family, for the
10 victims and their families and one that I hope will not
11 be misinterpreted by angry family members.

12 Now I can impose a sentence but I have to tell
13 you, I don't find the whole thing very satisfying. How
14 explains this to Rosalie -- is it Sedona (sic)?

15 MS. NOTOPOULOS: Sagona, your Honor.

16 THE COURT: Sagona or to Linda Calder and
17 others? I'm not able to explain it to them other than to
18 demonstrate what you have accomplished and you've made
19 the world a little safer.

20 So I am going to sentence you to five years
21 probation. I do it with difficulty. I do it, as I said,
22 without sense of satisfaction but I acknowledge how far
23 you've come.

24 The very first day I met you when you were very
25 uncomfortable, and we had just a minute to chat while

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1 people were lining up, court reporters and things of
2 that, somehow we got into talking about what you might do
3 down the road and you mentioned architecture. This is
4 like 16, 17 years ago. And at the moment, it sort of
5 went in one ear and out the other. I figured it was a
6 pipe dream, somebody out to impress me. But here we are
7 and you meant it. You accomplished it and I can't do
8 anything in that regard but tip my hat to you.

9 THE DEFENDANT: Thank you.

10 THE COURT: I hope you understand why I feel so
11 uncomfortable about this and I wish you well. A \$50
12 special assessment. There will be no fine.

13 Anything else?

14 MR. WIRFEL: I would just comment in case
15 anyone else is reviewing this, your Honor, I don't
16 believe restitution is mandatory under the sentencing --

17 THE COURT: It isn't -- in light of the report,
18 there will be no restitution.

19 MS. NOTOPOULOS: Your Honor, there is the
20 underlying indictment, 90-cr-446, that the government
21 moves to dismiss.

22 THE COURT: The application is granted.

23 MS. NOTOPOULOS: And I suppose Mr. Chiodo could
24 be advised of his right to appeal, although obviously --

25 THE COURT: If you want to appeal, you should

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1 have your head examined but you have the right to do so.

2 MR. WIRFEL: Your Honor, you took the words out
3 of my mouth.

4 THE COURT: But you have the right to do so.

5 Take care of yourself.

6 (Matter concluded)

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C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this
15th day of October, 2007.

Rosalie Lombardi
Transcription Plus II